

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

LUCKY'S MARKET PARENT COMPANY,
LLC, *et al.*,¹
Debtors.

Chapter 11

Case No. 20-10166 (JTD)
(Jointly Administered)

**SNYDER CONSTRUCTION, INC. d/b/a SNYDER GENERAL CONSTRUCTION, INC.'S
NOTICE OF FILING AND PERFECTION OF
CONSTRUCTION LIEN PURSUANT TO 11 U.S.C. §§ 362(b)(3) and 546(b)**

COMES NOW Snyder Construction, Inc. d/b/a Snyder General Construction, Inc. (“Snyder”), a creditor of the above-captioned debtor, and files, pursuant to Sections 362(b)(3) and 546(b) of the United States Bankruptcy Code, this Notice of Filing and Perfection of Construction Lien against certain assets and property of the Debtor, Lucky's Market Operating Company, LLC (the “Debtor”), as more particularly described in the three (3) Amended Claims of Lien attached hereto respectively as Exhibits A, B, and C, and, in support hereof, states as follows:

**I.
Brief Factual Background**

1. On January 27, 2020 (the “Petition Date”), the above-captioned Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in this Court.

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Lucky's Market Parent Company, LLC (2055), Lucky's Farmers Market Holding Company, LLC (5480), Lucky's Market Operating Company, LLC (7064), LFM Stores LLC (3114), Lucky's Farmers Market, LP (0828), Lucky's Farmers Market Resource Center, LLC (7711), Lucky's Market Holding Company 2, LLC (0607), Lucky's Market GP 2, LLC (9335), Lucky's Market 2, LP (8384), Lucky's Market of Longmont, LLC (9789), Lucky's Farmers Market of Billings, LLC (8088), Lucky's Farmers Market of Columbus, LLC (3379), Lucky's Farmers Market of Rock Hill, LLC (3386), FLM Jackson, LLC (8300), Lucky's Farmers Market of Ann Arbor, LLC (4067), Lucky's Market of Gainesville, LLC (7877), Lucky's Market of Bloomington, LLC (3944), Lucky's Market of Plantation, LLC (4356), Lucky's Market of Savannah, GA, LLC (1097), Lucky's Market of Traverse City, LLC, (2033), Lucky's Market of Naples, FL, LLC (8700), and Sinoc, Inc. (0723).

2. At various times prior to the Petition Date, Snyder and the Debtor directly contracted with each other whereby Snyder performed certain work, and provided certain labor and materials to construct stores for the Debtor.

3. On or about August 29, 2019, Snyder commenced work on Lucky's Market Store No. 53 located in Fort Myers, Florida ("Store 53"). The last of Snyder's work on Store 53 was provided on December 19, 2019. As of the Petition Date, the Debtor owes Snyder the sum of \$87,698.48 for unpaid work and materials provided between August 29, 2019 and December 19, 2019. On February 19, 2020, Snyder timely filed its Amended Claim of Lien on Store 53 in conformance with Section 713.08 of the Florida Statutes (the "Amended Store 53 Lien"). A true and correct time-stamped copy of the Amended Store 53 Lien is attached as **Exhibit A**.

4. On or about August 13, 2019, Snyder commenced work on the construction of Lucky's Market Store No. 62 located in Clearwater, Florida ("Store 62"). The last of Snyder's work on Store 62 was provided on January 7, 2020. As of the Petition Date, the Debtor owes Snyder the sum of \$901,761.00 for unpaid work and materials provided between August 13, 2019 and January 7, 2020. On February 19, 2020, Snyder timely filed its Amended Claim of Lien on Store 62 in conformance with Section 713.08 of the Florida Statutes (the "Amended Store 62 Lien"). A true and correct time-stamped copy of the Amended Store 62 Lien is attached as **Exhibit B**.

5. On or about October 28, 2019, Snyder commenced work on Lucky's Market Store No. 66 located in Brandon, Florida ("Store 66"). The last of Snyder's work on Store 66 was provided on December 20, 2019. As of the Petition Date, the Debtor owes Snyder the sum of \$313,017.00 for unpaid work and materials provided between October 28, 2019 and December 20, 2019. On February 19, 2020, Snyder timely filed its Amended Claim of Lien on Store 66 in

conformance with Section 713.08 of the Florida Statutes (the “Amended Store 66 Lien”). A true and correct time-stamped copy of the Amended Store 66 Lien is attached as **Exhibit C**.

6. Snyder is seeking all prejudgment interest at the highest rate allowed by law, plus all post-judgment interest and other costs and expenses incurred by Snyder in connection with the filing, prosecution, collection and foreclosure of these construction liens, including attorneys’ fees.

II. **Argument and Authorities**

7. Under state law and the United States Bankruptcy Code, Snyder has the right to file and perfect its construction lien on the Debtor’s stores and leaseholds.

8. Under Florida law, construction liens such as those asserted by Snyder relate back, for priority purposes, to the time of recordation of the notice of commencement. See Section 713.07(2), Florida Statutes. In this case, the Notices of Commencement relative to Snyder’s work were recorded on August 16, 2019 (Store 53), August 21, 2019 (Store 62), and November 8, 2019 (Store 66). Section 713.08(5), Florida Statutes, further provides that a construction lien may be perfected within 90 days after the final furnishing of labor, services or materials by the lienor. As noted in paragraphs 3, 4 and 5 above, Snyder’s final furnishing of labor, services or materials was completed within the statutory time period.

9. Section 713.08, Florida Statutes, provides the requirements and contents of the claim of lien and the method to perfect the lien. Snyder perfected its liens by timely recording its Claims of Lien with the appropriate Florida Clerks of Court on January 24, 2020 (the “Store 53 Lien”), January 22, 2020 (the “Store 62 Lien”), and January 28, 2020 (the “Store 66 Lien”). Snyder then timely perfected its Amended Claims of Lien for all three stores (as set forth above in paragraphs 3, 4 and 5), as permitted by Section 713.08(4)(b), on February 19, 2020 by recording

them with the appropriate Florida Clerks of Court (all such Claims of Lien and Amended Claims of Lien being collectively referred to herein as the "Snyder Liens").

10. This Notice shall provide notice of the perfection of the Snyder Liens under 11 U.S.C. §546(b) and Snyder's intention to continue the perfection of the Snyder Liens.

11. Notice is sufficient for purposes of 11 U.S.C. §546(b)(2) if it makes clear that the interest holder intends to enforce its interest in the Property. *See, e.g., Jones v. Salem Nat'l Bank (In re Fullop)*, 6F.3d 422 (7th Cir. 1993); *Casbeer v. State Fed. Sav. & Loan Ass'n of Lubbock (In re Casbeer)*, 793 F.2d 436 (5th Cir. 1986). Snyder intends to enforce its interests against the properties and leases referenced in the Snyder Liens. Accordingly, the filing of a pleading such as this constitutes proper notice. *See, e.g., Virginia Beach Fed. Sav. & Loan Ass'n v. Wood*, 901 F.2d 849 (10th Cir. 1990).

12. Snyder does not waive its right to seek adequate protection for its interest in the properties, nor does Snyder waive any rights as a secured, administrative or unsecured creditor under the Bankruptcy Code, including, but not limited to, rights to assert administrative expenses under 503(b)(9) or otherwise.

13. Snyder also seeks to preserve its right to all interest at the appropriate rate, as well as other costs and expenses, including attorneys' fees that may be awarded by the Court.

WHEREFORE, Snyder provides this Notice pursuant to 11 U.S.C. §546(b) perfecting the Snyder Liens.

Dated: February 20, 2020

Respectfully submitted,

MORRIS JAMES LLP

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